

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NO. C-090435
		TRIAL NO. B-0801279
Plaintiff-Appellee,	:	
		<i>JUDGMENT ENTRY.</i>
vs.	:	
MICHAEL D. JACKSON,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

Following a jury trial, defendant-appellant Michael Jackson was found guilty of aggravated murder with accompanying gun specifications, murder with accompanying gun specifications, two counts of felonious assault with accompanying gun specifications, and two counts of having a weapon under a disability. Jackson received an aggregate sentence of 33 years' to life imprisonment. He has appealed, raising five assignments of error for our review.

The evidence presented at trial established that an ongoing feud existed between Jackson and the victim of these offenses, Ronald Dickerson. On February 13, 2008, Jackson and Dickerson were involved in a verbal argument outside a United Dairy Farmers convenience store. Following this argument, Jackson provided a ride home to

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

Serena Andrews, a young woman whom Dickerson had been dating. On this ride, Jackson repeatedly stated that “I’m gonna hurt him” in reference to Dickerson.

The following morning, February 14, 2008, Jackson again encountered Dickerson at United Dairy Farmers. Jackson left the store upon seeing Dickerson outside. A store employee testified that she had seen Jackson and Dickerson arguing, and that she had heard Jackson ask, “Why I got to wait on my money?” The argument between Jackson and Dickerson escalated, and testimony established that Jackson had chased Dickerson across the street, into the yard of the home where Dickerson had been staying. Dickerson’s cousin Bobby Stevenson III had been inside that home at this time. Stevenson testified that he had heard gunshots and looked out the window. He saw Dickerson lying on the ground and witnessed Jackson walk towards Dickerson’s body and shoot him in the head. Kizuwanda Bullock had also been inside the home, and she too witnessed Jackson shoot Dickerson in the head. Jackson fled, but later that day he surrendered to the police.

In his first and second assignments of error, Jackson argues that his convictions for aggravated murder and murder were against the sufficiency and the weight of the evidence. R.C. 2903.01(A) defines aggravated murder, stating that “[n]o person shall purposely, and with prior calculation and design, cause the death of another.” The offense of murder is proscribed by R.C. 2903.02(A), which states that “[n]o person shall purposely cause the death of another.”

Jackson specifically argues that the state failed to demonstrate that he had acted with prior calculation and design. We cannot agree. Serena Andrews testified that, on the night before Dickerson was murdered, Jackson had told her repeatedly that he was going to hurt Dickerson. This was sufficient evidence of prior calculation and design for

aggravated murder.² Jackson's murder conviction was also supported by sufficient evidence. Jackson had left United Dairy Farmers to confront Dickerson, chased him across the street, and repeatedly fired shots at him, including one shot directly into Dickerson's head. This was sufficient evidence of a purposeful killing.

We further conclude that Jackson's convictions were not against the manifest weight of the evidence. Jackson testified that he had not told Serena Andrews that he was going to hurt Dickerson, and that he had only shot Dickerson after Dickerson had revealed a gun and threatened to kill him. The jury was in the best position to judge the credibility of the witnesses, and it was entitled to reject Jackson's testimony and to believe the independent witnesses. The jury did not lose its way and create a manifest miscarriage of justice.³ Jackson's first and second assignments of error are overruled.

In his third assignment of error, Jackson argues that his counsel was ineffective for failing to argue that Jackson had acted in self-defense. To rely on the affirmative defense of self-defense, a defendant must establish the following: "(1) the defendant was not at fault in creating the violent situation, (2) the defendant had a bona fide belief that she was in imminent danger of death or great bodily harm and that her only means of escape was the use of force, and (3) that the defendant did not violate any duty to retreat or avoid the danger."⁴

Following our review of the record, we hold that because the evidence did not support the conclusion that Jackson had acted in self-defense, his counsel was not ineffective for failing to raise this defense. Specifically, the evidence presented did not support the conclusion that Jackson was not at fault in creating the violent situation. Jackson had left the convenience store to confront Dickerson and had chased him

² See *State v. Martin* (1983), 20 Ohio App.3d 172, 175, 485 N.E.2d 717.

³ *State v. Thompson*, 78 Ohio St.3d 380, 387, 1997-Ohio-52, 678 N.E.2d 541.

⁴ *State v. Thomas*, 77 Ohio St.3d 323, 326, 1997-Ohio-269, 673 N.E.2d 1339.

across the street. He created the violent situation. Counsel's performance was not deficient, and we cannot say that, but for counsel's failure to raise self-defense, the outcome of the proceedings would have been different.⁵ The third assignment of error is overruled.

In his fourth assignment of error, Jackson argues that the sentence imposed by the trial court constituted a cruel and unusual punishment. As we have stated, the trial court imposed an aggregate sentence of 33 years' to life imprisonment. This included a sentence of 30 years to life for the aggravated murder and a consecutive three years' imprisonment for the accompanying gun specification. The offenses of murder and felonious assault, as well as their accompanying specifications and the second gun specification to the aggravated-murder count, were merged. The trial court imposed five years' imprisonment for each weapon-under-disability conviction, but made these sentences concurrent to the sentence imposed for aggravated murder.

Following *State v. Foster*, a trial court has full discretion to impose any sentence within the available statutory range.⁶ In this case, all sentences imposed fell within the available ranges.⁷ No abuse of discretion occurred in the imposition of a life sentence because a conviction for aggravated murder mandates a life sentence.⁸ Following our review of the record, we are not persuaded that the sentences imposed were disproportionate to the offenses committed, and we overrule this assignment of error.

In his fifth assignment of error, Jackson argues that the trial court erred in failing to instruct the jury on the offense of voluntary manslaughter. R.C. 2903.03(A) defines voluntary manslaughter, stating that "[n]o person, while under the influence of

⁵ *Strickland v. Washington* (1984), 466 U.S. 668, 687, 104 S.Ct. 2052.

⁶ 109 Ohio St.3d 1, 2006-Ohio-856, 845 N.E.2d 470.

⁷ See R.C. 2929.03(A)(1)(d).

⁸ See R.C. 2929.02(A).

sudden passion or in a sudden fit of rage, either of which is brought on by serious provocation occasioned by the victim that is reasonably sufficient to incite the person into using deadly force, shall knowingly cause the death of another.” A defendant charged with murder is entitled to an instruction on voluntary manslaughter when “the evidence presented at trial would reasonably support both an acquittal on the charged crime of murder and a conviction for voluntary manslaughter.”⁹

In this case, the evidence did not support a conviction for voluntary manslaughter and an acquittal on the charged offense of murder. Rather, the evidence demonstrated that Jackson had confronted Dickerson, purposefully chased him across the street, and fired a bullet directly into his head as he lay on the ground suffering from other bullet wounds that Jackson had inflicted. The only evidence of provocation occasioned by the victim came from Jackson’s self-serving testimony, and the evidence did not support the conclusion that Jackson had been under the influence of a sudden passion or fit of rage. The trial court properly declined to instruct the jury on the offense of voluntary manslaughter. The fifth assignment of error is overruled.

Therefore, the judgment of the trial court is affirmed.

A certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

SUNDERMANN, P.J., HENDON and DINKELACKER, JJ.

To the Clerk:

Enter upon the Journal of the Court on May 26, 2010

per order of the Court _____.
Presiding Judge

⁹ *State v. Shane* (1992), 63 Ohio St.3d 630, 632, 590 N.E.2d 272.